IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B.CRIMINAL MISC. PETITION NO. 142/2006
(Smt. Vijay Laxmi & Ors. Vs. State of Rajasthan & Anr.)

(2) S.B.CRIMINAL MISC. PETITION NO. 1173/2005
(Shiv Kumar Vs. Arun and Another)

Date of Order : 16/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Vinod Bhadu for petitioners Smt. Vijay Laxmi & Ors.
Mr. H.S. Sidhu for petitioner Shiv Kumar.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Both these criminal misc. petitions under Section 482 Cr.P.C. are directed against the order dated 16.9.2005 passed by learned Sessions Judge, Hanumangarh (for short 'the revisional court' hereinafter) in Criminal Revision No.141 and 140 of 2005, whereby the revisional court dismissed the revision petitions filed by petitioners Vijay Laxmi and Ors. as well as petitioner Shiv Kumar against the order dated 10.1.2005 passed by Judicial Magistrate, Pilibanga.

I have heard learned counsel for the parties.

Carefully gone through the order passed by both the courts below.

It is contended by learned counsel appearing for the petitioners in S.B.Cr. Misc. Petition No. 142/06 that the trial court as well as the revisional court fell in error in declining to grant monthly allowance of maintenance in favour of petitioner Smt. Vijay Laxmi and in granting inadequate monthly allowance of maintenance in favour of petitioners No.2 and 3 son and daughter of the petitioner No.1 Vijay Laxmi and non-petitioner No.2 Shiv Kumar.

Learned counsel appearing for the petitioner in S.B.Cr. Misc. Petition No.1173/05 filed by Shiv Kumar who is husband of Vijay Laxmi and father of non-petitioners contended that monthly allowance of maintenance granted in favour of both the minors is on higher side and therefore, seeks reduction.

I have given my thoughtful consideration to the rival submissions made by counsel for the parties.

An application under Section 125 Cr.P.C. was filed by the petitioners Vijay Laxmi and Ors. in Petition No.142/06 against Shiv Kumar who is husband of Vijay Laxmi and father of Arun and Nidhi, seeking monthly allowance of maintenance. A reply was filed by Shiv Kumar who is petitioner herein in Petition No.1173/05. Both the parties led their evidence. The trial court on the appreciation of the evidence came to the conclusion that

petitioner Smt. Vijay Laxmi has been living separately without any reasonable and probable cause and as such deserted her husband, and therefore, is not entitled for the monthly allowance of maintenance. However, the trial court granted monthly allowance of maintenance in favour of son and daughter of petitioner Smt. Vijay Laxmi and Shiv Kumar namely Arun and Nidhi who are minors at the rate of Rs. 700/- each. On a revision, the revisional court, on examination of the record, did not find any error, illegality or perversity in the order of the trial court and came to the conclusion that Smt. Vijay Laxmi wife of petitioner Shiv Kumar without there being any reasonable and probable cause voluntarily started living with her parents along with two minors and as such deserted petitioner Shiv Kumar and therefore, affirmed the finding recorded by the trial court declining to grant maintenance in favour of Smt. Vijay Laxmi as also did not find any ground to interfere in the order of the trial court granting monthly allowance of maintenance in favour of two minors @ Rs. 700/- each.

From the record, it appears that initially petitioner Smt. Vijay Laxmi pressurized her husband for their separate living from the parents-in-law to which her husband agreed. They had been living separately, yet she insisted her husband to shift to her parents house which her husband declined. Even she opposed the living of mother of her husband Shiv Kumar with

them and ultimately at her own went to her parents house along with children. Non-petitioner Shiv Kumar, the husband of Smt. Vijay Laxmi came with a case that he requested Smt. Vijay Laxmi to resume the matrimonial home but instead of resuming the matrimonial home she had telephoned her father and called her father and other family members who came armed with deadly weapons like Guns, Gandasi, Kasiya etc. and assaulted non-petitioner Shiv Kumar in which he suffered as many as fifteen injuries, apart from him, his mother also suffered injuries. Thus, non-petitioner Shiv Kumar and his mother suffered numerous fractures on hands, legs etc. for which a criminal case Ex.D-1 was lodged and after investigation, the police filed challan Ex.D-2. The injury reports Ex.D-3 to D-5 were also placed on record. On this evidence, the trial court concluded that it is not non-petitioner Shiv Kumar who refused to maintain petitioner Smt. Vijay Laxmi, but it is she, at her own, after getting her husband non-petitioner Shiv Kumar and his mother injured, left the matrimonial home and went along with her father and other family members at her parents' house. The revisional court on close scrutiny of the evidence available on record, concurred with the finding recorded by the trial court.

So far as the income of non-petitioner Shiv Kumar is concerned, he is having 33 bighas of land along with his father and is also running a STD/PCO booth and it is alleged that he is

earning Rs. 10,000/- per month. Be that as it may, whether the income of non-petitioner Shiv Kumar is Rs. 10,000/- or not, at any rate, directing him to pay a sum of Rs.700/- each as monthly allowance of maintenance, in any manner, cannot be said to be erroneous. The monthly allowance of maintenance granted in favour of two minors neither can be said to be on lower side nor can be said to be on higher side and therefore, in my view, the concurrent finding of facts recorded by the courts below does not require any interference in inherent jurisdiction of this Court.

In this view of the matter, I do not find any merit in both the petitions. The petitions filed by petitioners Smt. Vijay Laxmi and Ors. as also by petitioner Shiv Kumar are dismissed. Stay petition in Cr. Misc. Petition No.1173/05 also stands dismissed.

(H.R.PANWAR),J.

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